IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Arbitration Appeal No.3 of 2007
with
Civil Application No.1 of 2007

Vijay son of Vasant Angne ..Appellant

vs.

1. M/s Ashok Leyland Finance Limited and another ...Respondents

Shri D.S.Chandnani for appellant.
Smt.Shakuntala Joshi for respondents.

CORAM: S.C.DHARMADHIKARI J.
23rd March, 2007

P.C.

1. Although I had dismissed this matter for default, subsequently, Shri Chandnani appeared and on his oral request the appeal is restored to file and heard forthwith by consent of both sides. By consent the Annexures to the Appeal Memo and the Civil Application are permitted to be referred to and relied upon. Since,they suffice for the purpose of the hearing of the appeal there is no necessity for calling for the record and preparation of a separate paper book. By consent of both sides, the above requirement is dispensed with.

2. The appeal is directed against the order passed by the learned Civil Judge Sr.Dn., Thane on 20th September,2006 in Misc. Application No. 355 of 2001. Admittedly, this was an application invoking the Civil Judge's jurisdiction under sec.34 of the Arbitration and Conciliation Act, 1996 to challenge the award dated 25th June, 2001 made by Respondent no.2, sole Arbitrator.

3. The appellant was aggrieved by the award which directed the appellant to pay to respondent no.1 a sum of Rs.1,89,046/- and a sum of Rs.2000/- towards the Arbitrator's fees along with interest at the rate of 18% on the sums stipulated above from the date of award till the date of payment in terms of section 31(7)(b) of the Arbitration and Conciliation Act, 1996.

4. The appellant approached respondent no.1 and requested it to grant financial assistance to buy a truck. The appellant resides in the State of Maharashtra whereas respondent no.1 has its registered office at Chennai/Madras in the State of Tamil Nadu. It is the case of the appellant that

respondent no.1 advanced a loan of Rs. 2,89,600/- to purchase a truck which was valued at the relevant time at Rs.5,80,000/- and written agreement dated 7th April, 1999 was executed by the parties which envisages the Hire of the Truck by the appellant on monthly instalments. On payment of the final instalment the transaction was to come to an end. The appellant took delivery of the truck and as per the agreement he was to pay the price/value of the same by issuing post dated cheques. The fact that 35 post dated cheques were received by respondent no.1 is undisputed. Respondent no.1 deposited 3 cheques in the months of April, May and June, 1999 with the Bankers of the appellant and the same were duly encashed. However, it is the case of the appellant that thereafter he had financial difficulties and he approached respondent no.1's branch office at Vashi in May 2000 and requested them not to deposit the cheques which were falling due from July, 1999 to May 2000. These are 9 cheques in all. The appellant contended that respondent no.1 agreed to this request and has not deposited further cheques. However, on 1st April, 2000 respondent no.1 took forcible possession of the truck on the basis that the appellant had defaulted in payment of monthly

instalments. Later on in November, 2000 respondent no.1 informed the appellant that the agreement stands terminated. My attention is also invited to the communication from respondent no.1 appointing respondent no.2 as Arbitrator referring to her for adjudication all the disputes arising between the parties out of the agreement dated 7th April, 1999. The Arbitrator issued notice to the appellant who filed an affidavit opposing the claim of respondent no.1/claimant after the statement of claim was forwarded to the appellant by her.

5. The matter proceeded before the Arbitral Tribunal exparte because the Arbitral Tribunal held that it had issued notice to the appellant calling upon him to appear and make good his case as set out in the affidavit in reply. Since the appellant chose not to remain present the learned Arbitrator took on record the documents and ultimately made the award as above.

6. The appellant invoked the jurisdiction of the Trial Court by filing application under sec.34 of the Arbitration and Conciliation Act, 1996 which application has been dismissed by the impugned order.

7. In this appeal, Shri Chandnani appearing for the appellant has raised four contentions. His first contention is that the Arbitrator had no jurisdiction to take cognisance of the claim of respondent no.1. He submits that the Arbitrator held the arbitration proceedings at Madras, though no cause of action has taken place at Madras. The appellant had approached the Regional/Branch Office of respondent no.1 at Vashi and the transaction took place at Vashi. The truck was delivered to the appellant at Ratnagiri and was registered with the local transport authority. The truck was seized from the appellant's place of business in the State of Maharashtra and, therefore, the Arbitrator could not have held the arbitration proceedings at Chennai.

8. His second submission is that assuming and without admitting that the Arbitration proceedings could have taken place at Chennai/Madras, the appointment of the Arbitrator itself was bad in law. He submits that no unilateral appointment of Arbitrator could have been made by respondent no.1. He submits that such an unilateral appointment is contrary to law and in that behalf relies upon the

decision of the Supreme Court in Dharma Parathishthanam Vs.M/s Madhok Construction Pvt.Ltd. reported in AIR 2005 S.C.214.

9. His third contention is that assuming that the Arbitrator could have proceeded with the arbitration proceedings, it was incumbent upon respondent no.1 to prove its claim by leading oral and documentary evidence. There is nothing on record to indicate that the Arbitral Tribunal had before it proof of the claim. In such circumstances, the award directing payment to be made to respondent no.1 is void and of no legal effect.

10. Lastly and in any event, Shri Chandnani submits, that the Arbitrator could not have awarded any amount from the date the truck was repossessed by respondent no.1 till the same was disposed of in open market. Therefore, hire charges could not have been awarded from the date of such repossession.

11. All these submissions are countered by Smt.Joshi appearing for respondent no.1. She invites my attention to the arbitration clause and

contends that the same empowers respodnent no..1 to appoint the sole arbitrator of its choice. Even the venue has been agreed upon. She submits that the Trial Court has rightly held that the arbitration agreement is binding upon the appellant. In any event she submits that under the Arbitration and Conciliation Act, 1996, the Arbitrator is specifically empowered to rule upon his jurisdiction. Such an issue can be raised by the party appearing before the Arbitral Tribunal and the decision of the Arbitral Tribunal in that behalf could have been challenged further. However, the appellant chose not to appear before the Arbitral Tribunal despite several opportunities being given by Tribunal. In such circumstances and when the appellant has not produced any material nor has canvassed any arguments with regard to the award, this Court should not entertain the arguments in that behalf for the first time.

12. The learned Trial Judge in his elaborate judgment and order has dealt with all the arguments which were canvassed. In para 55 of the impugned judgment the Trial Court has observed that the agreement is filed before the Trial Court. A perusal of the same would indicate that it has

signature of the Hirer and guarantor. The Trial Court, in these circumstances, has rightly relied upon clause 22 which is the arbitral agreement between the parties. I am of the view that the Trial Court has not committed any error in relying upon the clause as the wording thereof is admittedly wide. Once any dispute arises under the agreement the parties have left the matter to the arbitrator whose appointment was at the option of respondent no.1. Even the venue has been agreed upon by the parties and they have agreed to abide the award made by the Arbitrator. The learned Trial Judge committed no error in relying upon clause 54 of the agreement which specifically states that the contents of the agreement are read out, explained and interpreted to the hirer and guarantor. Therefore, the appellant had agreed to the terms and conditions of the agreement. It is in such circumstances that I am of the view that there is no substance in the arguments of Shri Chandnani about the venue of the arbitration proceedings and jurisdiction of the learned Arbitrator.

13. The Court below has rightly observed that the appellant acted upon the hire purchase agreement

and paid 3 instalments and till July, 1999 he has paid a sum Rs.52,100/-. The termination of the agreement has been duly communicated by respondent no.1 to the appellant. In these circumstances, the Trial Court committed no error in holding that no case is made out for setting aside the award. The jurisdiction of the Court to set aside the award is circumscribed by sec.34 of the Arbitration and Conciliation Act, 1996. If the case does not fall within the purview of the same, then challenge to the Arbitral award must fail. The Trial Court has also observed that the arbitrator issued notices to the appellant in February, March, April and May 2001. These notices were sent by registered post A.D. Thus, there was due notice to the appellant of the arbitral proceedings. The arbitrator did not proceed exparte without prior intimation to the appellant. The Arbitrator, therefore, has complied with the provisions of natural justice. It is after notice that the Arbitrator proceeded exparte and relied upon the material produced by the claimants. In such circumstances, the Court below committed no error in rejecting the petition. The Court below has noted the fact that the vehicle was repossessed on 1st April, 2000. It was sold on 20th September, 2000. The appellant was given a

final notice on 27th April, 2000. There was no response despite its receipt. By another notice dated 16th June, 2000 the appellant was called upon to pay the balance sum then due but once again there was no response. The Court below has observed that the vehicle was sold for Rs.3,85,000/- The total dues were of Rs.5,89,054/- on the date of sale. There is a short fall of Rs,.2,13,054/- It is this amount which has been made subject matter of the arbitration proceedings and which also has not been awarded by the arbitrator in its entirety. In my view the Arbitrator had acted justly and fairly in awarding the sums as also interest thereon from the date of the award. Thus, the third and the further contention also must fail.

14. In the above circumstances, there is no merit in this appeal and it is summarily dismissed. The judgments relied upon by Shri Chandnani have no application to the facts of the present case because the clause in the arbitration agreement itself empowered respondent no.1 to make appointment and the parties chose the venue of the same by agreement. The second judgment in the case of Hakam Singh Vs. M/s Gammon (India) Ltd.

reported in AIR 1971 S.C.740 deals with applicability of a clause in the agreement about jurisdiction vis-a-vis section 20 of the Code of Civil Procedure. In the teeth of the clear provisions of Arbitration and Conciliation Act, 1996 and the agreement in question the ratio of these judgment would have no application. The appeal is, therefore, dismissed with no order as to costs.

15. In the light of dismissal of the appeal civil application does not survive and it is dismissed accordingly.

(S.C.DHARMADHIKARI J.)